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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/661,006 | 09/11/2003 | Richard Neil Tobin | 884.0080USU | 7484 |
| 7590 | 11/04/2005 | | | |
| Charles N.J. Ruggiero, Esq. Ohlandt, Greeley, Ruggiero & Perle, L.L.P. 10th Floor One Landmark Square Stamford, CT 06901-2682 | | | EXAMINER FETSUGA, ROBERT M | |
| | | | ART UNIT 3751 | PAPER NUMBER |

DATE MAILED: 11/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

TJH

Office Action Summary

Application No.

10/661,006

Applicant(s)

TOBIN ET AL.

Examiner

Robert M. Fetsuga

Art Unit

3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 September 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4,6-8,10-32 and 35-43 is/are pending in the application.
- 4a) Of the above claim(s) 7,16,19,22,23,35 and 42 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4,6,8,10-15,17,18,20,21,24-32,36-41 and 43 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 1/18/05 & 9/26/05 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the subject matter set forth in claims 4 and 25, "adjustable nozzles" set forth in claim 10, and "aeration and/or drainage apertures" set forth in claim 18, must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Applicant argues at pages 11-12 of the response filed September 26, 2005 the drawings need only illustrate the features of claims 4 and 25 as a graphical drawing symbol or labeled representation. The examiner agrees, however, no such showing has been made. Applicant argues at page 12 of the response the feature of claim 10 is supported at the noted portion of the instant specification. The examiner can not agree as applicant has not pointed to any evidence that teaches one what this feature might be. Applicant further argues at page 12 of the response the feature of claim 18 is already illustrated as element 15. The examiner can not agree as merely providing an aperture 15 through the raised portion 10 would not appear capable of performing the claimed function as would be understood from lines 10-13 on page 10 of the instant specification.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

2. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Proper antecedent basis for the subject

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matter set forth in claim 32 could not be found in the specification. Applicant is reminded claim terminology in mechanical cases should appear in the descriptive portion of the specification by reference to the drawing(s).

Applicant did not address this objection in the response.

3. Claim 10 is rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

The claim recites "adjustable nozzles". Implementation of this subject matter is neither taught by the instant disclosure nor evident to the examiner.

Applicant argues at page 14 of the response this subject matter is taught at "page 8, lines 30" of the instant specification. The examiner can not agree as there is no evidence of record supporting an understanding of this subject matter.

4. Claim 18 is rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

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The claim recites "aeration and/or drainage apertures". Implementation of this subject matter is neither taught by the instant disclosure nor evident to the examiner.

Applicant argues at page 14 of the response this subject matter is taught at page 7, lines 15-16, of the instant specification. The examiner can not agree as the apertures 15 would merely drain water through the raised portion 10 to the exterior of the reservoir 9.

5. Claims 21 and 31 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

The claims recite "a controller". Implementation of this subject matter is neither taught by the instant disclosure nor evident to the examiner.

Applicant argues at page 14 of the response this subject matter is taught at page 15, lines 2-5, of the instant specification. The examiner can not agree as the switches 22 and roller actuator 50 do not appear "remote" as recited in claim 21. Furthermore, applicant has not pointed to any evidence of record supporting an understanding of the subject matter of these claims.

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6. Claim 25 is rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

The claim recites "an ion and/or ozone emitter for emitting ions into said fluid." Implementation of this subject matter is neither taught by the instant disclosure nor evident to the examiner.

Applicant argues at page 14 of the response this subject matter is taught at "page 7, lines 25" of the instant specification. The examiner can not agree as there is no evidence of record supporting an understanding of this subject matter.

7. Claims 36-41 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

The claims recite a "roller actuator". Implementation of this subject matter is neither taught by the instant disclosure nor evident to the examiner.

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Applicant argues at page 15 of the response this subject matter is taught in "the specification", but fails to indicate where.

8. Claims 10 and 32 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 10 depends from a cancelled claim.

Claim 32 recites "said operative functions can operate separately." The metes and bounds of this language is neither discernable from the instant application, nor evident to the examiner.

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 1, 2, 4, 6, 8, 11, 12, 14, 15, 17, 20, 21, 24, 26, 27 and 29-32, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Kurosawa '529 and Barradas.

The Kurosawa '529 ('529) reference discloses a spa comprising: a housing 2; a fluid transport assembly 22 including an inlet 20, an outlet 18 and a pump 22; a heater 21a; a vibrating actuator 16; a control panel/controller 29; a raised surface 5; an infrared heater 6; a cover 3; a raised portion (Fig. 2); and an aerator 19. Therefore, '529 teaches all claimed elements except for the control panel/controller being "remote".

Although the control panel/controller of the '529 spa may not be remote, as disclosed, attention is directed to the Barradas reference which discloses an analogous spa which further includes a remote control (abstract). Therefore, in consideration of Barradas, it would have been obvious to one of

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ordinary skill in the spa art to associate a remote control with the '529 spa in order to facilitate use.

Applicant argues at page 17 of the response Barradas teaches a removable remote control unit. The examiner agrees, and notes this control appears to be equivalent to the claimed remote control as understood from the paragraph bridging pages 9 and 10 of the instant specification. Furthermore, this subject matter appears consistent with the elected embodiment.

Applicant further argues at page 17 of the response the Barradas remote control does not generate a signal. The examiner can not agree as the Barradas control necessarily generates a signal in order to operate the electrical devices of the spa as disclosed. Applicant further yet argues at page 17 of the response there is no "suggestion or motivation" to combine the '529 and Barradas disclosures. The examiner can not agree as Barradas provides an express teaching at column 1, lines 32-35, as to why one would find it desirable to associate a remote control with a spa.

11. Claims 3, 14, 17, 24, 28-30, 32, 36-39, 41 and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over '529 and Barradas as applied to claim 1 above, and further in view of Ferber et al. '795.

Re claim 3, although the '529 spa does not include a housing heater, as claimed, attention is directed to the Ferber

et al. '795 ('795) reference which discloses an analogous spa which further includes a housing heater 48. Therefore, in consideration of '795, it would have been obvious to one of ordinary skill in the spa art to associate a housing heater with the '529 spa in order to facilitate use. Applicant has not substantively argued this ground of rejection beyond noting claim dependency.

Re claim 14, it would have been obvious to locate the infrared heater of the '529 spa on the raised portion as taught by '795 (abstract) in order facilitate use. Applicant has not substantively argued this ground of rejection beyond noting claim dependency.

Re claim 29, although the '529 spa does not include a variety of attachments, attention is again directed to '795 (Figs. 9-21) which discloses a variety of attachments (Figs. 14-18b). Therefore, in further consideration of '795, it would have been obvious to one of ordinary skill in the spa art to associate a variety of attachments with the '529 spa in order to facilitate use. Applicant has not substantively argued this ground of rejection beyond noting claim dependency.

Re claim 36, it would have been obvious to utilize a roller actuator with the '529 spa as taught by '795 (element 42) in

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order to facilitate use. Applicant has not substantively argued this ground of rejection beyond noting claim dependency.

Re claim 43, although the '529 spa does not include a foot bed insert, as claimed, attention is yet again directed to '795 (Fig. 20) which discloses a foot bed insert 193. Therefore, in still further consideration of '795, it would have been obvious to one of ordinary skill in the spa art to associate a foot bed insert with the '529 spa in order to facilitate use.

12. Claims 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over '529 and Barradas as applied to claim 1 above, and further in view of Morton.

Although the control panel of the '529 may not be "suitable to be operated via a user's foot or toe", as claimed, attention is directed to the Morton reference which discloses an analogous spa which further includes a control panel 60 that is operated via a user's foot (par. 0045). Therefore, in consideration of Morton, it would have been obvious to one of ordinary skill in the spa art to associate a foot operated control panel with the '529 spa in order to facilitate use.

Applicant argues at page 17 of the response Morton is not prior art to the instant application. However, this statement is insufficient to remove Morton as a prior art reference. See MPEP 706.02(I)(1).

13. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over '529, Barradas and '795 as applied to claim 17 above, and further in view of Cafaro.

Although the raised portion of the '529 spa does not include a heat control, an attachment receptor nor an infrared heater, as claimed, attention is directed to the '795 reference (Figs. 9-21) which discloses an analogous spa which further includes a raised portion 120 having a heat control 142, an attachment receptor 187 and an infrared heater 146. Therefore, in consideration of '795, it would have been obvious to one of ordinary skill in the spa art to associate a heat control, an attachment receptor and an infrared heater with the '529 raised portion in order to facilitate use. Applicant has not substantively argued this ground of rejection beyond noting claim dependency.

Although the raised portion of the '529 spa does not include an aperture, as claimed, attention is directed to the Cafaro reference which discloses an analogous spa which further includes a raised portion 142 having an aperture 168. Therefore, in consideration of Cafaro, it would have been obvious to one of ordinary skill in the spa art to associate an aperture with the '529 raised portion in order to facilitate

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use. Applicant has not substantively argued this ground of rejection beyond noting claim dependency.

14. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over '529 and Barradas as applied to claim 17 above, and further in view of Yeh.

Although the '529 spa does not include an ozone emitter, as claimed, attention is directed to the Yeh reference which discloses an analogous spa which further includes an ozone emitter (abstract). Therefore, in consideration of Yeh, it would have been obvious to one of ordinary skill in the spa art to associate an ozone emitter with the '529 spa in order to facilitate use.

Applicant argues at page 20 of the response Yeh does not disclose an ozone emitter. The examiner can not agree as such subject matter is expressly taught in Yeh and referred to by numeral 40.

15. Claim 40 is rejected under 35 U.S.C. 103(a) as being unpatentable over '529, Barradas and '795 as applied to claim 36 above, and further in view of Bauer et al.

Although the knob of the '529 controller does not include soft elastic material, as claimed, attention is directed to the Bauer et al. (Bauer) reference which discloses an analogous controller which further includes a knob having soft elastic

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material (abstract). Therefore, in consideration of Bauer, it would have been obvious to one of ordinary skill in the controller art to associate soft elastic material with the '529 knob in order to facilitate use.

Applicant has not substantively argued this ground of rejection beyond noting claim dependency.

16. Applicant is referred to MPEP 714.02 and 608.01(o) in responding to this Office action.

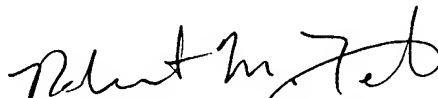
17. The grounds of rejection have been reconsidered in light of applicant's arguments, but are still deemed to be proper.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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18. Any inquiry concerning this communication should be directed to Robert M. Fetsuga at telephone number 571/272-4886 who can be most easily reached Monday through Thursday. The Office central fax number is 571/273-8300.

A handwritten signature in black ink, appearing to read "Robert M. Fetsuga", is positioned above the printed name.

Robert M. Fetsuga
Primary Examiner
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